IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.28 OF 2007

Rita Mananprasad Bhondekar,)
Aged:36 Yrs., Indian Inhabitant,)
Occ:Service,)
Residing at-C/o.Mr.Charajeet)
Kumar, Rajdeep 63, Linking Road,)
Santacruz (W), Mumbai.) ...Applicant

Versus

Mananprasad Trarachand Bhondekar)
Age:38 Yrs., Indian Inhabitant,)
Occ: Business,)
Residing at 37, Mota Nagar,)
Tumsar Road, Dist:Bhandara,)
Maharashtra 411 912.) ...Respondent

Shri V.M.Parashurami i/by Shri Ashish S.Gaikwad for the Plaintiff.

Shri M.V.Jain for the Respondent.

CORAM : ABHAY S.OKA, J.

DATE ON WHICH SUBMISSIONS ARE HEARD. : JUNE 29, 2007.

DATE ON WHICH JUDGMENT IS PRONOUNCED. : AUGUST 23, 2007.

JUDGMENT:

1. This is an Application made under section 24 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code). The Applicant is the wife of the Respondent. The marriage between the Applicant and the Respondent was solemnised at Mumbai

on 22nd December, 1999. The Respondent filed Marriage Petition No.98 of 2006 against the Applicant in the Court of the Civil Judge, Senior Division at Bhandara for a decree of divorce. The prayer in this Application is for transfer of the said Petition to the Family Court at Bandra, Mumbai.

2. The Applicant has contended that from 25th March, 2001 she is residing in her parents' house at Santacruz, Mumbai. According to the Applicant she is employed as a laboratory technician in a private hospital at Mumbai. According to the case of the Applicant, the Respondent has a place of residence both at Bhandara and Nagpur and he has been carrying on business at Nagpur. According to the case of the Applicant, the distance between Mumbai and Bhandara is approximately 550 to 600 Kms. According to the case of the Applicant, there is no one in her family who is in a position to accompany her to Bhandara for attending the court proceedings. According to the Applicant, she is in depressed condition and has a genuine difficulty in undertaking a long journey from Mumbai to Bhandara. A case is made out that the Respondent has a large earning from his business and he visits Mumbai every month for the purposes of his business. The Applicant has contended that the Court

of learned Civil Judge, Senior Division at Bhandara has no jurisdiction to entertain and try the Petition filed by the Respondent.

3. The Respondent has filed affidavit in reply. He has contended that a customary marriage between the parties was performed at Tumsar, District Bhandara and therefore, the Court at Bhandara has got jurisdiction to entertain and try the Petition. It is contended in the reply that the Applicant's take home salary is Rs.10,750/- per month. It is stated that the parents of the Applicant own a premises in a prime location in Mumbai. It is stated that the Applicant's sister is a medical practitioner and is residing in Mumbai. It is stated that the Respondent suffers from bone tuberculosis and other ailments. A reliance is placed on various documents to prove the illness. It is stated that the Respondent has to look after his old and ailing mother who is residing all alone in the ancestral house at Tumsar, District Bhandara. It is stated that due to the sickness suffered by the Respondent, he suffers frequent strokes and looses control over both his lower limbs. It is stated that the Respondent has no fixed income and he has to repay the loan taken from HDFC.

4. I have heard the submissions of the learned counsel appearing for the parties. Both the learned counsel have relied upon the factual assertions made by the parties in their respective pleadings. The learned counsel for the Respondent submitted that the present Application arises in judicial district of Bhandara and therefore, in view of rule 1 of Chapter XXXI of the Appellate Side Rules, this Application ought to have been presented at the Nagpur Bench of this Court. He submitted that only on this ground the Application cannot be entertained. He submitted that no case is made out for passing order of transfer and if such order is passed, it will be impossible for the Respondent to attend to the proceeding in the Family Court at Mumbai.

5. I have carefully considered the submissions. At the outset, I am dealing with the objection raised by the learned counsel for the Respondent to the presentation of this Petition with the Principal Seat of this Court at Mumbai. Rule 1 of Chapter XXXI of the Appellate Side Rules reads thus:

> "1. All appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the

Constitution arising in the Judicial Districts of Akola, Amravati, Bhandara, Buldana, Chandrapur, Nagpur, Wardha, Yavatmal and Gadchiroli which lie to the High Court of Bombay shall be presented to the Additional Registrar of that High Court at Nagpur and shall be disposed of by the Judges sitting at Nagpur;

. Provided that the Chief Justice, may, in his discretion, order that any case arising in any such district shall be heard at Bombay:

. Provided further that the Chief Justice may, in his discretion order that any cas presented at Bombay be heard at Nagpur."

6. The contention of the learned counsel for the Respondent is that as the matrimonial petition of which the transfer is sought by this Application is pending in Civil Court at Bhandara, this Application arises in the judicial district of Bhandara and therefore, in view of the aforesaid rule, this Application will lie before the Bench of this Court at Nagpur.

7. The Applicant-wife is a resident of Mumbai. One of the contentions raised by the Applicant is that the matrimonial petition has been deliberately filed by the Respondent in the Court at Bhandara with a view as to harass the Applicant. The prayer in the Application is for transfer of the said Petition filed by the Respondent to the Family Court at Bandra, Mumbai which is situated in Mumbai suburban district within the territorial jurisdiction of the Principal Seat of this Court at Mumbai. Considering the fact that the Applicant is a resident of Mumbai and the prayer in this Application is for transfer of the Petition filed by the Respondent to the Family Court at Bandra in Mumbai, it cannot be said that the cause of action for filing the present Application arises only in the judicial district of Bhandara. The cause of action also arises at Mumbai considering the facts of this case.

8. It will be necesary to refer to a decision of the learned single Judge of this Court in the case of **Haji Abdul Haji Abdul Razkar Yasim Patel Vs. Bara Imam Masjid Trust & Ors (2006(1) Maharashtra Law Journal page 184)**. The learned single Judge has extensively considered the decision of the Apex Court in the case of **Kusum Ignots and Alloys Ltd Vs. Union**

of India & Anr [(2004) 6 Supreme Court Page 254]. The learned single Judge observed thus:

> ". However, having regard to the High Court (Appellate Side) Rules, the Benches of the Principal Seat would be extremely slow in entertaining matters which have arisen within the ordinary territorial jurisdiction of another Bench".

9. Considering the facts of the present case, in my view, this Petition could have been filed both at the main Seat at Mumbai and at the Bench at Nagpur. This Application arises in both the judicial districts of Bhandara as well as Mumbai. The ground on which transfer is sought is that the Applicant is a resident of Mumbai and the prayer in the Application is for the transfer of the Petition to the Family Court at Bandra, Mumbai. This Application could have been filed in the bench at Nagpur as the Petition sought to be transferred is pending in the court at Bhandara and the Respondent is a resident of Bhandara or Nagpur.

10. If the submission of the counsel for the Respondent is accepted, the same will result into serious prejudice to the litigants. For example, in a

case where a wife is a resident district Chandrapur, the husband residing at Mumbai files a Petition for divorce in the Family Court at Bandra at Mumbai and if the Applicant-wife by reason of poverty or ailment or helplessness wants to apply for transfer of the Petition filed in the Family Court at Mumbai to the Court at Chandrapur, the Applicant will have to all the way come to Mumbai for filing the Application for transfer.

11. The phraseology used in rule 1 of Chapter XXXI is "arising in the judicial districts of Akola, Amravati.....". Therefore, as stated earlier, it can be safely stated that this Application arises in the judicial district of Mumbai as well as in the judicial district of Bhandara. Therefore, the first submission of the learned counsel for the Respondent has no merit.

12. The Applicant has averred that she is working as a laboratory technician in a private hospital at Mumbai and that she is a resident of Mumbai. The said fact is stated in sub-paragraph (e) in paragraph No.2 of the Application. In the reply filed by the Respondent this fact is not disputed. It is stated that the Applicant’s brother is an engineer and is

residing alongwith the Applicant. The ground in the Application is that there is no one in the family who is in a position to accompany the Applicant to Bhandara for attending the Court at Bhandara. Thus, in substance the ground is that it is not possible for the Applicant to undertake long journey from Mumbai to Bhandara. The distance between the two places is about 550 to 600 Kms.

13. The defence of the Respondent is that he is under the medical treatment as he is suffering from bone tuberculosis. Reliance is placed on certificate of Dr.J.M.Deshmukh, Nagpur in which it is recorded that the Respondent is under his treatment from 16th July, 2006 for the tuberculosis of bone and other ailments. The certificate records that the Respondent was last examined on 26th February, 2007.

14. The Respondent has not disputed that he is having a business at Nagpur. According to him, his income is not Rs.50,000/- per month as alleged but the income varies from time to time. The difficulty pointed out by the Applicant appears to be very genuine. Merely because the Applicant has a brother who is an engineer it cannot be said that he is available to accompany the Applicant to Bhandara. The

Applicant will have to make frequent visits to Bhandara as she will have to give instructions from time to time to the local lawyer engaged by her. The Applicant who is a woman will have to undertake a long journey of 600 Kms very frequently from Mumbai to Bhandara. It must be stated here that in paragraph No.7 of the Application, it is specifically averred that the Respondent frequently visits Mumbai for his business. There is no specific denial of the said averment in the reply filed by the Respondent. Infact, in paragraph No.11 of the reply, the Respondent has specifically dealt with other averments made in paragraph No.7 of the Application regarding his income. In my view, a case is made out for passing an order of transfer. As the Respondent was under medical treatment, the Family Court can be directed not to insist on his personal presence unless it is necessary.

15. Hence, I pass the following order:

(i) The Application is allowed.

(ii) Marriage Petition No.98 of 2006 is hereby transferred from the Court of learned Civil Judge, Senior Division, Bhandara to the Family

Court at Bandra, Mumbai.

(iii) The Family Court at Bandra will not insist on personal appearance of the Respondent unless it is absolutely mandatory.

(iv) The Family Court will issue notice of the date fixed for hearing to both the parties.

(v) The record of the case shall be transmitted by the Court at Bhandara within a period of two weeks from the date of receipt of writ of this order.

(vi) Writ to be sent immediately.

(vii) No orders as to costs.

JUDGE